Filed 9/30/02 In re Joanna R. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re JOANNA R. et al., Persons Coming Under the Juvenile Court Law.	
FRESNO COUNTY DEPARTMENT OF CHILDREN & FAMILY SERVICES, Plaintiff and Respondent, v. RHONDA S., Defendant and Appellant.	F039691 (Super. Ct. No. 01CEJ300100) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. A. Dennis Caeton, Judge, and Robert Thompson, Commissioner.

Judith E. Ganz, under appointment by the Court of Appeal, for Defendant and Appellant.

Phillip S. Cronin, Fresno County Counsel, and Howard K. Watkins, Deputy County Counsel, for Plaintiff and Respondent.

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This is a second appeal by Rhonda S. (appellant) relating to the removal of her children Joanna R., born in 1989, and George E., born in 1988, pursuant to a petition filed under Welfare and Institutions Code section 300[1] in June 1996. (See case No. 39258.) In the first appeal, we affirmed the juvenile court orders sustaining a section 387 petition filed by the Fresno County Department of Children and Family Services (DCFS) and denying appellant's section 388 motion. The children were placed with their maternal grandmother.

In this appeal, appellant challenges the juvenile court's disposition order relating to Joanna.[2] We affirm.

PROCEDURAL AND FACTUAL HISTORIES

We set forth a detailed description of the procedural and factual histories in appellant's first appeal. (See case No. 39258.) We therefore limit our discussion here to those facts relevant to the issues in this appeal.

On June 28, 2001, a supplemental juvenile dependency petition was filed under section 387 alleging that Joanna was very unhappy living with appellant, fighting with her constantly, and that a therapist recommended Joanna be returned to her

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[1]All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2]Appellant also repeated several arguments made in her first appeal. Those arguments are that the juvenile court committed reversible error in 1) removing Joanna from appellant's care at a statutorily unauthorized hearing, rendering all subsequent proceedings void; 2) overruling appellant's demurrer to the section 387 petition; and 3) sustaining the section 387 petition. We do not address these claims here as we already disposed of them in the prior appeal. As a result, it is unnecessary for us to take judicial notice of the reporter's transcript for the July 3, 2001, hearing, as requested by the DCFS. We therefore deny the request. It is also unnecessary for us to take judicial notice of the February 20, 2002, minute order reflecting that Fresno County retained the case. Appellant's request is irrelevant to any issue on appeal and is therefore denied.

grandmother's home. At the detention hearing on July 3, 2001, the court found that the DCFS established a prima facie case and ordered conjoint counseling for appellant and Joanna "when therapy recommends."

At the jurisdiction and review hearings on August 29 and September 4, 2001, the juvenile court found the allegations of the section 387 petition true with respect to Joanna. Joanna remained placed with her grandmother. The court also found long-term foster care to be the appropriate plan for George.

According to the 18-month review report dated October 18, 2001, Joanna was doing well in her placement with her grandmother and her grandmother was cooperating with family reunification efforts. Appellant completed a mental health assessment and was recommended therapy but had not participated in ongoing therapy. The social worker referred appellant and Joanna to conjoint therapy, but the family, to date, had not received it. The social worker also opined that the parents had not made adequate progress to warrant the extension of additional family reunification services and it was unlikely Joanna could be safely returned to appellant's custody within the next six months. According to the social worker's disposition report, Joanna stated she did not want to see a private therapist but would be willing to talk with her school counselor. She refused to visit with appellant. The social worker also opined that Joanna was at risk of running away if placed with appellant.

At the disposition hearing on December 4, 2001, appellant's counsel requested additional reunification services, arguing reasonable services were not provided. The court found, based on clear and convincing evidence, that detriment still existed if Joanna were returned to appellant's care and declared Joanna a dependent of the court. The court terminated reunification services to appellant, placed Joanna with her grandmother, and ordered the permanent plan to be long-term foster care.

DISCUSSION

I. Substantial evidence for disposition order

Appellant contends substantial evidence does not exist to support the juvenile court's disposition order removing Joanna from her care. Specifically, appellant argues there is no substantial evidence to support the court's findings that return of Joanna to her care would pose a substantial danger to the child, and all reasonable efforts were made to prevent Joanna's removal.

A. Standard of review

> "A parent's right to the care, custody and management of a child is a fundamental liberty interest protected by the federal constitution. [Citation.] 'Parenting is a fundamental right, and accordingly, is disturbed only in extreme cases of persons acting in a fashion incompatible with parenthood.' [Citation.] 'In furtherance of these principles, the courts have imposed a standard of *clear and convincing* proof of parental inability to provide proper care for the child and resulting detriment to the child if it remains with the parent, before custody can be awarded to a nonparent.' [Citation.]" (*In re James T.* (1987) 190 Cal.App.3d 58, 64.)

Section 361 provides, in relevant part:

> "(a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations.… The limitations shall not exceed those necessary to protect the child. [¶] … [¶]
>
> "(c) No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:
>
> "(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody.… [¶] … [¶]

> "(d) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home …. The court shall state the facts on which the decision to remove the minor is based."

On appeal from a disposition order removing a child from parental custody, the substantial evidence test applies to determine whether there was clear and convincing evidence presented to the juvenile court. (*In re Walter E.* (1992) 13 Cal.App.4th 125, 139-140; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 169-170.)

> "This court has neither the duty nor the right to resolve conflicts in the evidence, pass on the credibility of the witnesses, or determine where the preponderance of the evidence lies. The trier of fact decides each of these matters; our power on appeal begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. We resolve all conflicts in favor of the respondent on appeal and give respondent the benefit of all legitimate and reasonable inferences. Where the facts reasonably support more than one inference, we may not substitute our judgment for that of the trier of fact. Considering only the evidence favorable to respondent, the question is whether that evidence is sufficient as a matter of law. If so, we must affirm the judgment." (*In re Walter E.*, *supra*, 13 Cal.App.4th at pp. 139-140; see also *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.)

B. Evidence

In this case, there is sufficient evidence of substantial danger to Joanna. Joanna's therapist opined Joanna was at high risk of running away in appellant's care. Joanna argued with appellant constantly and did not attend school regularly. The therapist concluded Joanna was at high risk to use drugs and alcohol in her mother's care based on her anger toward appellant and depression resulting from her separation from her grandparents.

In addition, there is also sufficient evidence to support the finding that reasonable efforts were made to prevent or eliminate the need to remove Joanna from appellant's custody. Again, Joanna's therapist opined Joanna did not have a bond with her mother and, in fact, expressed considerable anger toward her mother, despite prior counseling

sessions. Given Joanna's high risk of running away, it is difficult to discern any alternative means to protect Joanna in appellant's care. Appellant's suggestion that conjoint counseling sessions would have prevented Joanna's removal is unconvincing, particularly in light of the family's prior unsuccessful efforts with reunification services and the extreme dysfunctional relationships within the family. Moreover, appellant failed to participate in ongoing therapy, despite being offered counseling services, including conjoint therapy.

Contrary to appellant's suggestion, we do not find this evidence inconsistent with any prior conclusions of the juvenile court. In sum, we find substantial evidence supports the juvenile court's findings relating to the disposition order.

II. Failure to specify factual basis for decision

With little analysis or supporting authority, appellant contends the juvenile court's failure to articulate the factual basis for its decision to remove Joanna requires reversal. Admittedly, the juvenile court failed to make the required findings. However, the error does not require reversal here.

"[C]ases involving a court's obligation to make findings regarding a minor's change of custody or commitment have held the failure to do so will be deemed harmless where 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.'" (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218; see also *In re Corienna G.* (1989) 213 Cal.App.3d 73, 83.) Because we find the juvenile court's decision is supported by substantial evidence, we conclude the error is harmless. It is not reasonably probable that the proper findings, if made, would have been in favor of continued parental custody.

III. Sufficiency of services provided

Appellant next contends there is insufficient evidence in the record to support the juvenile court's finding that reasonable services were provided to her. On review of sufficiency of reunification services, our sole task is to determine whether the record

discloses substantial evidence to support the juvenile court's finding that reasonable services were provided or offered to appellant. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762; *James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020-1021.) In doing so, we resolve all conflicts in support of the juvenile court's finding and indulge all legitimate inferences to uphold its order. We may not substitute our deductions for those of the juvenile court. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) Additionally, "we must also recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Ibid.*)

Appellant contends that the DCFS failed to provide her with any services to ease normal preadolescent-parent friction and resistance to parental authority on the part of Joanna. Appellant argues that the failure to implement conjoint therapy to foster the mother-daughter reunion rendered the services unreasonable. Our review of the record finds the services offered to appellant were reasonable and appropriate under the circumstances.

As recognized by the DCFS, the court ordered conjoint counseling for appellant and Joanna in July 2001 "when therapy recommends." Appellant has set forth no evidence that any therapist recommended conjoint counseling after July 2001. In fact, the evidence from Joanna's therapist suggests conjoint therapy would not be appropriate.

The original reunification plan provided for counseling for both appellant and her children to resolve issues related to physical abuse and neglect. The plan also provided for substance abuse treatment for appellant. Appellant received these services, including parenting classes. According to the 18-month review report dated October 18, 2001, appellant was recommended therapy but did not participate in ongoing therapy. The social worker also referred appellant and Joanna to conjoint therapy, but neither participated in such therapy. Joanna, in fact, refused to see a private therapist. "The

requirement that reunification services be made available to help a parent overcome those problems which led to the dependency of his or her minor children is not a requirement that a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.)

Contrary to appellant's contention, we find it was not a lack of reasonable services that prevented reunification, but a lack of willingness on appellant's part to attend and participate in the required counseling. "[Appellant's] real problem was not a lack of services available but a lack of initiative to consistently take advantage of the services that were offered." (*Angela S. v. Superior Court*, *supra*, 36 Cal.App.4th at p. 763.)

We find the record contains substantial evidence to support the juvenile court's finding that reasonable services were provided.

IV. Additional reunification services

Finally, appellant contends the juvenile court committed reversible error in failing to order additional reunification services because 1) the services provided were unreasonable, and 2) the permanent plan was long-term foster care and "the sound exercise of discretion disfavors a mechanical approach." We have already disposed of appellant's first ground. We find appellant's second ground unpersuasive.

As a general rule, the juvenile court is required to terminate reunification services if the child cannot be returned to parental custody within 18 months from the date the child was originally removed. (§ 366.21, subd. (f), (g); § 366. 22, subd. (a).) The court does have limited discretion to extend the 18-month period, but only if it finds that adequate services were not previously offered. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777-1778; see also *In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1213-1214 [reunification services may be extended beyond 18-month period if agency responsible for providing services has failed to make reasonable effort to provide services].) Additional reunification services are not mandatory under section 387. The failure of a

disposition order on a supplemental petition to include additional reunification services is reversible error only if, under the particular facts of the case, the juvenile court abused its discretion in failing to order such services. (*In re Michael S., supra*, 188 Cal.App.3d 1448, 1457-1459.) "Key factors in this determination would be whether the services already offered were adequate, whether they addressed the concerns raised by the subsequent petition, and whether the objectives of the reunification plan—the reunification of the family—could be achieved with the provision of additional services." (*In re Barbara P.* (1994) 30 Cal.App.4th 926, 934.)

In this case, we fail to find any abuse of discretion. As discussed above, the reunification services offered to appellant were adequate. She received 18 months of services under the original petition. Many of the services offered under the plan adopted pursuant to the original petition—counseling, therapy, and parenting classes—were directly relevant to the allegations raised in the supplemental petition. Moreover, on this record, we do not find this to be a case that would benefit from additional services given the extreme dysfunction in the family's relationships.

DISPOSITION

The December 4, 2001, disposition order is affirmed.

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Wiseman, J.

WE CONCUR:

_____
Vartabedian, J.

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Harris, J.